

Message Text

LIMITED OFFICIAL USE

PAGE 01 EC BRU 05975 01 OF 02 021147Z

45

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 AGR-05 SS-15 NSC-05 SP-02 L-03

H-02 AID-05 CEA-01 CIAE-00 COME-00 FRB-03 INR-07

NSAE-00 CIEP-01 STR-04 TRSE-00 LAB-04 SIL-01 SAM-01

OMB-01 IO-10 TAR-01 /091 W
----- 026282

R 021041Z JUL 75

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 9181

INFO ALL EC CAPITALS 844

LIMITED OFFICIAL USE SECTION 1 OF 2 EC BRUSSELS 5975

E.O. 11652C NA

TAGS: ETRD, EEC, EAGR

SUBJECT: TOBACCO CLASSIFICATION PROBLEM

REF: A) STATE 150012 B) EC BRUSSELS 5464

C) STATE 270348 (1974)

1. SUMMARY: THE EC CONTINUES TO DESIRE SOME "OBJECTIVE" BASIS FOR CLASSIFYING TOBACCO AS "FLUE-CURED VIRGINIA AND LIGHT AIR-CURED BURLEY". MEMBER STATES HAVE DISCUSSED THE US POSITION AS PRESENTED IN REF C AND COME OUT, NEVERTHELESS, FOR EXPORT CERTIFICATION AS THE ONLY ACCEPTABLE METHOD. EC COMMISSION OFFICIALS DO NOT, HOWEVER, EXCLUDE THE POSSIBILITY THAT A SOLUTION OTHER THAN EXPORT CERTIFICATION MIGHT BE ACCEPTABLE--BUT THEY WOULD NEED BETTER INFORMATION AND FURTHER US PERSUASION TO ARRIVE AT SUCH A POSITION. FOR THE MOMENT, THE PROBLEM IS NOT ACUTE. HOWEVER, IN THE ABSENCE OF COMMUNITY GUIDANCE, MEMBER STATES ARE LIKELY TO CLASSIFY TOBACCO ON THE BASIS OF THEIR "ECONOMIC" INTERESTS--I.E. SOME TOBACCO WHICH SHOULD BE ENTERED AT THE CONCESSION RATE MAY NOT BE. END SUMMARY:.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 EC BRU 05975 01 OF 02 021147Z

2. ON JUNE 30 WE DISCUSSED THE TOBACCO CLASSIFICA-

TION PROBLEM AT LENGTH WITH JANSSENS AND SEVERAL MEMBERS OF HIS STAFF. WE STRESSED THE UN-ACCEPTABILITY OF EXPORT CERTIFICATION TO THE US AND NOTED THAT IF, IN THE ABSENCE OF SUCH A CERTIFICATION SYSTEM, US TOBACCO EXPORTS WERE NOT CLASSIFIED IN BTN 24.01A WHEN THIS IS THE APPROPRIATE CLASSIFICATION, THE RESULT WOULD BE TO UNDERMINE THE VALUE OF THE TOBACCO CONCESSIONS NEGOTIATED IN THE ARTICLE XXIV:6 SETTLEMENT, WITH CONSEQUENCES UNDER GATT WHICH THE COMMISSION COULD READILY APPRECIATE.

3. THE COMMISSION OFFICIALS NOTED THAT WHEN THE CONCESSION WAS INSTITUTED, A FOOTNOTE WAS INSERTED IN THE COMMUNITY TARIFF SCHEDULE READING AS FOLLOWS: "ENTRY UNDER THIS SUBHEADING IS SUBJECT TO CONDITIONS TO BE DETERMINED BY THE COMPETENT AUTHORITIES OF THE EC". IN DECEMBER, AFTER THEY HAD BEEN PROVIDED THE INFORMATION CONTAINED IN REF C, THIS ISSUE HAD BEEN THOROUGHLY DISCUSSED WITH MEMBER STATE CUSTOMS EXPERTS. THESE EXPERTS HAD CLAIMED THAT THERE WAS NO OBJECTIVE WAY TO IDENTIFY THE TOBACCO IN QUESTION, I.E. THEY KNEW OF NO GENERALLY ACCEPTED BOTANICAL OR CHEMICAL TESTS OR CRITERIA TO AID IN IDENTIFYING THE TOBACCO. THEY ADMITTED THAT THERE WERE SOME TOBACCO EXPERTS WHO COULD RECOGNIZE THE TOBACCO, BUT THESE EXPERTS WERE FEW IN NUMBER AND NOT IN THE EMPLOY OF MEMBER STATE CUSTOMS SERVICES. THE CONCLUSION WAS THAT EXPORT CERTIFICATION WAS THE ONLY ANSWER--AND THIS CONCLUSION WAS AGREED TO BY ALL MEMBER STATE REPRESENTATIVES.

4. JANSSENS SAID THAT IN DISCUSSING THE IDEA OF EXPORT CERTIFICATION HE HAD NOT NECESSARILY IMPLIED THAT THE FEDERAL GOVERNMENT SHOULD ISSUE THESE CERTIFICATES. HE FELT THAT OTHER ORGANISMS, SUCH AS STATE DEPARTMENTS OF AGRICULTURE OR INDUSTRY GROUPS, MIGHT BE IN A POSITION TO DO SO.

5. WE NOTED AGAIN THAT THERE WERE PROBLEMS WHICH IN THE VIEW OF THE US GOVERNMENT WERE INSUPERABLE LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 EC BRU 05975 01 OF 02 021147Z

IN EXTENDING THE USDA CERTIFICATION SYSTEM WHICH NOW EXISTS AT THE AUCTION LEVEL TO THE EXPORT SALES LEVEL. WE SUGGESTED THAT THERE WERE MEANS OF IDENTIFYING TOBACCO, SUCH AS THOSE CITED IN PARA 1 OF REF C. WE ALSO ARGUED THAT CLASSIFICATION COULD BE BASED ON THE STATEMENTS OF IMPORTERS, SUBJECT TO PROSECUTION FOR FRAUD.

6. THE RESPONSE TO THIS WAS THAT ALL OF THESE POINTS HAD BEEN MADE AND REJECTED. IT WAS NOT IN THE TRADITION OF EUROPEAN CUSTOMS SERVICES TO ACCEPT IMPORT CERTIFICATION AS A BASIS FOR CLASSIFICATION. IT WAS OF COURSE POSSIBLE TO PURSUE FRAUD ON AN EX-POST FACTO BASIS, BUT WHAT WAS BEING SOUGHT WAS A BASIS FOR INITIAL CLASSIFICATION.

7. WE ALSO PRESSED ON JANSSENS THE INVITATION (PARA 3 OF REF A) TO VISIT THE US TO DISCUSS THE CLASSIFICATION PROBLEM AND REVIEW US TECHNIQUES. JANSSENS DID NOT REJECT THIS INVITATION, BUT DID NOT TAKE IT UP AT THE PRESENT MOMENT. WHAT HE AND HIS STAFF MEMBERS DID EXPRESS AND INTEREST IN WAS WRITTEN MATERIAL, E.G. A COPY OF THE ARTICLE CITED IN PARA 2 OF REF C AND DOCUMENTATION REGARDING US CUSTOMS TECHNIQUES CITED IN PARA 3 OF REF A. THEY WOULD, THEY SAID, PASS SUCH MATERIAL ON TO MEMBER STATES.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 EC BRU 05975 02 OF 02 021156Z

45

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 AGR-05 SS-15 SP-02 NSC-05 L-03

H-02 AID-05 CEA-01 CIAE-00 COME-00 FRB-03 INR-07

NSAE-00 CIEP-01 STR-04 TRSE-00 LAB-04 SIL-01 SAM-01

OMB-01 IO-10 TAR-01 /091 W

----- 026358

R 021041Z JUL 75

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 9182

INFO ALL EC CAPITALS 845

LIMITED OFFICIAL USE SECTION 2 OF 2 EC BRUSSELS 5975

8. WHILE THE COMMISSION OFFICIALS FEEL THAT EXPORT CERTIFICATION IS THE BEST WAY OUT, THEY DID NOT ABSOLUTELY EXCLUDE OTHER POSSIBILITIES, SUCH AS DEVELOPING A DEFINITION INVOLVING OBJECTIVE IDENTI-

FICATION CRITERIA FOR THIS CUSTOMS CATEGORY.. THEY ALSO AT LEAST CONTEMPLATED THE POSSIBILITY OF A HYBRID SYSTEM IN WHICH IMPORTER STATEMENTS AND THE MARKINGS OF SHIPMENTS WOULD BE SUPPORTED BY COPIES OF CERTIFICATES ISSUED AT THE AUCTION LEVEL-- EVEN THOUGH WE POINTED OUT THE PROBLEMS OF ASCERTAINING THAT THE SAME TOBACCO WAS INVOLVED.

9. TWO STATEMENTS MADE BY THE COMMISSION OFFICIALS SEEMED TO US ILLUMINATING WITH REGARD TO THIS PROBLEM. FIRST, THE SUBORDINATE OFFICIALS IN JANSSENS' DIVISION TOLD US THAT THEY HAD OPPOSED THIS TARIFF CONCESSION IN ITS CURRENT FORM ON THE BASIS THAT IT WOULD BE IMPOSSIBLE TO DEVELOP A USABLE DEFINITION FOR IT. SECOND, JANSSENS SAID THAT IN THE ABSENCE OF A COMMUNITY DEFINITION MEMBER STATES WOULD HAVE TO MAKE THEIR OWN DETERMINATIONS AS TO CLASSIFICATION. HIS SUBORDINATED NOTED THAT IN SUCH A SITUATION "ECONOMIC" RATHER THAN LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 EC BRU 05975 02 OF 02 021156Z

LEGAL CRITERIA WOULD DOMINATE. SOME MEMBER STATES, E.G. THE UK, WITH A MAIN INTEREST IN IMPORTING LOW COST PRODUCTS, WOULD BE LIKELY TO CLASSIFY TOBACCO IN 24.01A. OTHER MEMBER STATES WITH A PRODUCTION INTEREST, SUCH AS ITALY, WOULD BE LIKELY NOT TO CLASSIFY ANY TOBACCO IN THIS CATEGORY.

10. COMMENT: THERE IS A GREAT MIXTURE OF MOTIVES IN THIS AFFAIR. THERE ALSO IS, WE BELIEVE , A REAL PROBLEM. IT SEEM DESIRABLE FOR THE US TO GO AS FAR AS IT CAN IN HELPING THE COMMUNITY DEVELOP AN "OBJECTIVE" BASIS FOR CLASSIFYING THIS TOBACCO. (WE WOULD, OF COURSE, RESERVE OUR GATT RIGHTS SHOULD THE COMMUNITY OR ITS MEMBER STATES NOT CLASSIFY THE TOBACCO AS WE THINK WAS INTENDED BY THE CONCESSIONS.) ONE ALTERNATIVE WOULD BE TO FURTHER EXPLORE THE POSSIBILITY OF USING DOCUMENTS ISSUED AT THE AUCTION LEVEL AS VERIFICATION OF PROPER CLASSIFICATION. WE REQUEST USDA'S OPINION ON THE FEASIBILITY OF THIS APPROACH.

11. WE HAVE HAVE SOME DOUBT AS TO THE UNANIMITY OF MEMBER STATE VIEWS ON THE MATTER OF CERTIFICATION, DESPITE JANSSENS' STATEMENTS. WE WOULD SUGGEST THAT IT MIGHT BE DESIRABLE FOR LONDON TO DISCUSS THIS ISSUE, IN A DISCREET FASHION, WITH THE BRITISH CUSTOMS SERVICE TO GET THEIR OPINION ABOUT THE POSSIBILITY OF DISTINGUISHING THESE TOBACCOS WITHOUT THE AID OF A CERTIFICATE. FINALLY, ASSUMING THAT JANSSENS CONTINUES TO BE UNRESPONSIBLE TO INVITATIONS TO VISIT THE US, THE POSSIBILITY OF CONSULTATIONS AT AN EXPERT LEVEL IN BRUSSELS MIGHT

BE CONSIDERED.
GREENWALD

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TOBACCO, STANDARDS, AGRICULTURAL CONTROLS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: izenbei0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975ECBRU05975
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750229-0280
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750789/aaaadbhy.tel
Line Count: 225
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 STATE 150012, 75 EC BRUSSELS 5464
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 18 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 APR 2003 by SmithRJ>; APPROVED <22 SEP 2003 by izenbei0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: TOBACCO CLASSIFICATION PROBLEM
TAGS: ETRD, EAGR, EEC
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006